SUPREME COURT, U. S.

Supreme Court U.S.
FILED
SEP 7 1971
E. ROBERT SEAVER, CLERK

No. 70-848

In the Supreme Court of the United States

OCTOBER TERM, 1971

TIT TIT WONG AND NEE NEEN CHAN, PETITIONERS

v.

UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,

WILLIAM D. RUCKELSHAUS,
Assistant Attorney General,

BEATRICE ROSENBERG,
LEONARD J. NELLHAUS,
Attorneys,

Department of Justice,
Washington, D.C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 70-243

TIT TIT WONG AND NEI NGAN CHAN, PETITIONERS

v.

UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

Petitioners are Chinese seamen who jumped ship and were thereafter ordered deported after evidentiary hearings before a special inquiry officer of the Immigration and Naturalization Service. The orders were affirmed by the Board of Immigration Appeals (Pet. App. 18a–31a) and the United States Court of Appeals for the District of Columbia Circuit (Pet. App. 1a–17a). Their petition does not question the sufficiency of the evidence upon which the deportation orders were based, but urges that the evidence was obtained in violation of their constitutional

rights.[1] This contention was thoroughly considered and rejected by the court below and further review is not warranted.

The facts set forth by the court below (Pet. App. 5a–8a) are as follows: Petitioners and two other Chinese aliens accompanied petitioner Wong's brother to the Washington Hospital Center, where the brother sought medical treatment. The receptionist at the hospital, doubting that the brother was lawfully in the country, notified the immigration office, and two officers were dispatched to investigate. When one of the officers subsequently identified himself to the receptionist, petitioners left the room in a manner that aroused the suspicions of the officer. When the officer completed his interrogation of the brother some fifteen minutes later (which disclosed that the latter was a lawful resident), he went to look for petitioners in order to talk to them. When, some time later, the officer found petitioners outside the hospital, petitioners hurried into a parked car which they unsuccessfully attempted to lock and start. Unable to question petitioners because of the language barrier, the officer removed the key from the car, asked a hospital guard to watch the vehicle and thereafter blocked it with his own car. Several minutes later, a passing Chinese student was enlisted as an interpreter; with his assistance

[1] A similar issue is presented in *Yi Au Lau and Lam Sai Ting* v. *United States Immigration and Naturalization Service*, No. 70–227, which was argued together with this case in the court of appeals. While similar legal issues are involved, the cases involve different factual backgrounds and we have separately responded to the petition in No. 70–227.

it was ascertained that petitioners were in the United States illegally. Petitioners were then arrested, and they subsequently turned over to investigators certain seamen's papers which were used against them at their deportation hearing.

Contrary to petitioners' contention, the officer's successful efforts to detain them until interrogation was possible did not constitute an "arrest" whose validity must be judged by "probable cause" standards. Immigration officers are authorized by 8 U.S.C. 1357 to interrogate without warrant "any alien or person believed to be an alien as to his right to be or to remain in the United States." Petitioners' actions in leaving the hospital waiting room and in attempting to lock and start the car were sufficiently suspicious to justify detaining them temporarily for the purpose of interrogation. See *Terry* v. *Ohio*, 392 U.S. 1.[2] As the court of appeals pointed out (Pet. App. 15a–16a), the actual interrogation was not unduly lengthy and petitioners' detention prior to the interrogation was occasioned solely by the necessity of finding an interpreter.

---

[2] The question whether temporary detention constitutes sufficient "custody" to require pre-interrogation *Miranda* warnings is presently before this Court in *United States* v. *Campos-Serrano*, No. 70–46, certiorari granted, March 1, 1971. The court of appeals in that case agreed with the court below that the warnings are not required where the interrogation is undertaken (as it was here) to determine only status and not whether a criminal violation has occurred. *United States* v. *Campos-Serrano*, 430 F. 2d 173, 176 (C.A. 7). In *Campos-Serrano*, the Seventh Circuit found (wrongly, we submit) "an overbearing atmosphere" which created "the requisite degree of compulsion" requiring the warnings, since an issue of possible criminal violation had arisen before the interview resulting in the excluded statement. 430 F. 2d at 177–178. No such circumstances were found here.

Accordingly, the conduct of the officers was reasonable and did not violate petitioners' rights under the Fourth Amendment. Only after the officers satisfied themselves, with the assistance of the interpreter, that they had probable cause to believe that petitioners were in the country illegally, were the arrests made.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.
WILL WILSON,
Assistant Attorney General.
BEATRICE ROSENBERG,
MARSHALL TAMOR GOLDING,
Attorneys.

JULY 1971.

U.S. GOVERNMENT PRINTING OFFICE: 1971